

**PROPOSED CHANGES TO 14 CALIFORNIA CODE
OF
REGULATIONS SECTIONS 11386 AND 11303**

Deletions are indicated by ~~striketrough~~. Additions are underlined.

1. Amend Section 11386 as follows:

§11386. Standardized Fines.

- (a) This Section shall apply to an enforcement action ~~If the Executive Director determines:~~
(1) that an alleged violation has allegedly occurred that is one of a the types identified in
subsection 11386(~~d~~ e);
- (2) that the alleged violation has not resulted in significant ~~that the civil penalty portion of the~~
~~alleged violation is susceptible to resolution by the payment of the standardized fine specified in~~
~~subsection 11386(d); and that the extent of harm to the Bay's resources or to existing or future~~
public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's
laws and policies. ~~Would not be significant when both the violation and its resolution are~~
~~considered;~~
- (b) Except as provided in subsection (g), if this Section applies to an enforcement action, the
Executive Director shall mail a written notice to the person(s) believed to be responsible for the
alleged violation that contains all of the following information:
- (1) the nature of the alleged violation and each and every action that must be taken to correct
the alleged violation;
- (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the
notice, the Commission shall not impose any civil penalty; and
- (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the
notice, the person believed to be responsible for the alleged violation may be subject to the
payment of a civil penalty and may resolve the civil penalty portion of the alleged violation by
paying the standardized fine specified in subsections (~~d~~ e), and (f) without having to go through a
formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in
subsection (h).
- ~~(b)~~ (c) Except as provided in subsection (g), ~~If~~ the person believed to be responsible for the
alleged violation completes each and every corrective action specified in the notice pursuant to
subsection (~~a~~ b) within thirty-five (35) days after the mailing of the notice, the Commission shall
not impose any standardized or other fine.
- ~~(c)~~ (d) Except as provided in subsections (g) and (h), ~~If~~ the person believed to be responsible for
the alleged violation fails to complete one or more of the corrective actions required by the
notice pursuant to subsection (~~a~~ b) within thirty-five (35) days after the date of the mailing of the

notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (a ~~b~~) and by paying a fine in the amount provided in subsections ~~(d e)~~ and (f).

~~(d)~~ (e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (a ~~b~~): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days of the date of the mailing of the notice required by subsection (a ~~b~~): THREE THOUSAND DOLLARS (\$3,000.00) plus ~~EIGHTY-ONE HUNDRED DOLLARS (\$80.00)~~ (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (a ~~b~~): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-one ~~six (64 66)~~ and ninety ~~five (90 95)~~ days after the date of the mailing of the notice required by subsection (a ~~b~~): THREE THOUSAND DOLLARS (\$3,000.00) per document;

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (a ~~b~~): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ~~EIGHTY-ONE HUNDRED DOLLARS (\$80.00)~~ (\$100.00) per day for each document, from the ninety-sixth (96) day to the date the document is received by staff.

(3) for the failure to comply with ~~the public access improvements or maintenance~~ any conditions required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (a ~~b~~): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (a ~~b~~): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (a ~~b~~): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ~~EIGHTY-ONE HUNDRED DOLLARS (\$80.00)~~ (\$100.00) per day for each violation, from the ninety-~~fifth~~ sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days, and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected ~~within the same time limits between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b):~~ TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days, and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected ~~within the same time limits between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b):~~ EIGHT FIVE THOUSAND DOLLARS ~~(\$8,000.00~~ \$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected within the same time limits: EIGHT FIVE THOUSAND DOLLARS ~~(\$8,000.00~~ \$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date the permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a statewide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days, and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected ~~within the same time limits between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b):~~ ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days, and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected ~~within the same time limits between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b):~~ TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (a b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date the permit is obtained, or the unauthorized activity is completely corrected ~~within the same time limits;~~

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status ~~within~~ between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (a b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (a b): FIVE EIGHT THOUSAND DOLLARS (\$5,000.00 \$8,000.00);

(C) if the violation is corrected and the area restored to its prior status ~~between ninety-six (96) and one hundred and twenty five (125)~~ more than 95 days after the mailing of the notice required by subsection (a b): SIX EIGHT THOUSAND DOLLARS (\$6,000.00 \$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

~~(e)~~ (f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

~~(f)~~ (g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions within the time limits specified by the Executive Director and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director shall may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (d e), (f), and (g) believes either that the amount is inappropriate or that the time established by the Executive Director within which the violation must be fully resolved to avoid the commencement of an enforcement proceeding in accordance with Sections 11300 through 11385 is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate, and can appeal the time limit to the Chair, who can modify the time limit as he or she believes appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code.

Reference: Sections 66632(f) and 66641.5, Government Code; and Sections 29201(e) and 29610, Public resources Code.

2. Amend Section 11303 as follows:

§11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code.

Reference: Sections 66641(d), Government Code; and Sections 29201(e), Public Resources Code.